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ST LOUIS, MO 63102

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OFFICE OF PETITIONS

In re Patent No. 7,078,433 :  
Wuthier et al. :  
Issue Date: July 18, 2006 :  
Application No. 10/696,760 : LETTER REGARDING  
Filed: October 29, 2003 : PATENT TERM ADJUSTMENT  
Attorney Docket No. USO 4571.3:

This is in response to the "LETTER REGARDING ERROR IN PATENT TERM ADJUSTMENT," filed July 18, 2006. Patentees assert that because a terminal disclaimer was filed in this application no Patent Term Adjustment should be awarded.

The request for correction of the patent term adjustment (PTA) is DISMISSED.

Patentees are given **thirty (30) days** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

35 U.S.C. 154(b)(2)(B) provides that:

No patent the term of which has been disclaimed beyond a specified date may be adjusted under this section beyond the expiration date specified in the disclaimer.

37 CFR § 1.703(g) provides that:

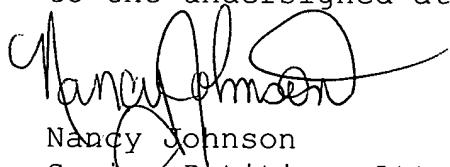
No patent, the term of which has been disclaimed beyond a specified date, shall be adjusted under § 1.702 and this section beyond the expiration date specified in the disclaimer.

The provisions of § 154(b), for adjustment due to examination delay, apply to original applications, other than designs, filed on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

As this letter was submitted as an attempt to advise the Office of an error in Patentees' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272 - 3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions